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Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Certain Steel – **Supplemental Comments** in Response to Request to
Exclude Unfinished Carbon Steel Butt-Weld Pipe Fittings from Import
Relief Under Section 203

Dear Ms. Blue:

On November 27, 2001, on behalf of Mills Iron Works, Inc. (“Mills”), Trinity Fitting Group, Inc. (“Trinity”), and Tube Forgings of America, Inc. (“TFA”), U.S. producers of carbon steel butt-weld pipe fittings, and pursuant to the Trade Policy Staff Committee’s (“TPSC”) notice requesting comments,¹ we submitted these firms’ response to a request to exclude unfinished carbon steel butt-weld pipe fittings from import relief under Section 203 filed on November 13, 2001 on behalf of Weldbend Corporation. Please find attached additional comments by these parties that supplement our November 27 response, and which are timely filed pursuant to the TPSC’s notice amending its filing requirements.²

¹ Trade Policy Staff Committee; *Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001). One of the steel products covered by the Trade Policy Staff Committee’s *Federal Register* notice is carbon and alloy flanges, fittings, and tool joints (steel product 6), which encompasses carbon steel butt-weld pipe fittings.

² Trade Policy Staff Committee; *Extension of Deadline for the Submission of Responses to Requests for the Exclusion of Specific Products From Any Action Under Section 203 of the Trade Act of 1974 With*

Please feel free to contact the undersigned should you have any questions.

Respectfully submitted,

/s/ Cheryl Ellsworth

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Tube Forgings of America, Inc.

Regard to Imports of Certain Steel and Modifications to the Earlier Instructions for the Submission of Written Comments, 66 Fed. Reg. 59599 (November 29, 2001).

I. Introductory Statement

These supplemental comments are filed on behalf of Mills Iron Works, Inc. (“Mills”), Trinity Fitting Group, Inc. (“Trinity”), and Tube Forgings of America, Inc. (“TFA”), firms that manufacture carbon steel butt-weld pipe fittings (“BWPF”), an article within the carbon and alloy flanges, fittings, and tool joints product grouping.³

On November 13, 2001 pursuant to the TPSC’s notice requesting comments, Weldbend Corporation (“Weldbend”) requested that unfinished BWPF (what Weldbend refers to as “butt-weld pipe fitting forgings” or “fitting forgings”) be excluded from any remedy imposed by the President under Section 203(a) of the Trade Act of 1974.⁴ On November 27, 2001, Mills, Trinity, and TFA filed a response opposing Weldbend’s exclusion request, and expressing these domestic producers’ position that excluding unfinished BWPF would render ineffective any remedy imposed on finished BWPF. These comments are submitted as a supplement to the response filed by Mills, Trinity and TFA on November 27, 2001.

II. Customs No Longer Considers the Processing Required to Finish BWPF to Effect A “Substantial Transformation”

As discussed in our November 27 response, Weldbend requested that unfinished BWPF be excluded from any remedy measures imposed by the President on finished

³ BWPF includes finished and unfinished carbon steel BWPF, both those having an inside diameter not exceeding 360 millimeters classified in HTSUS subheading 7307.93.3000 (“small diameter”), and those with an inside diameter larger than 360 millimeters classified in HTSUS subheading 7307.93.9030 (“large diameter”). Products classified under subheadings 7307.93.3000 and 7307.93.9030 were included within the International Trade Commission’s determination of serious injury. See Final Staff Report at TUBULAR-4. The TPSC’s notice requesting comments also covered “carbon and alloy flanges, fittings, and tool joints.” *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001).

⁴ Request of Weldbend Corporation to Exclude From Import Relief Carbon Steel Butt-Weld Pipe Fitting Forgings (Included in HTSUS 7307.93.3000, 7307.93.9030) (November 13, 2001) (“Weldbend Exclusion Request”).

BWPF. Weldbend argued, *inter alia*, that such an exclusion could be readily administered by Customs, despite the fact that both finished and unfinished fittings are classified within the same tariff subheadings (7307.93.3000 and 7307.93.9030, Harmonized Tariff Schedule of the United States). According to Weldbend, finished and unfinished fittings are “distinct products with different appearances and textures.”⁵ To support this contention, Weldbend cited a 1970 ruling by the Court of International Trade, which it argues guides the Customs Service in distinguishing between finished and unfinished fittings:

Forgings undergo extensive manufacturing to become finished fittings – machine beveling, shot-blasting, boring and tapering, grinding, die stamping, painting, and inspecting, among others. These manufacturing steps “substantially transform” the forging into a new product, according to customs law. *Midwood Indus., Inc. v. United States*, 313 F.Supp. 951 (Cust. Ct.), *appeal dismissed*, 57 C.C.P.A.141 (1970) {“*Midwood*”}.⁶

As explained *infra*, Customs’ current opinion is that imported unfinished BWPF are not substantially transformed through processing into finished BWPF in the United States. Consequently, recent statements of the Customs Service indicate that it would be difficult to administer an exclusion for unfinished BWPF, resulting in a toothless remedy for domestic BWPF producers.

III. Customs Intends to Revoke Its Rulings Based On *Midwood*, Including A Ruling Involving Unfinished BWPF Imported and Converted By Weldbend

On November 21, 2001, the U.S. Customs Service published a notice advising interested parties that it intends to revoke or modify certain ruling letters, and Customs treatment, relating to determinations as to the country of origin of pipe fittings and

⁵ Weldbend Exclusion Request at 2.

⁶ *Id.*

flanges.⁷ These ruling letters dealt with pipe fittings and flanges produced in the United States from imported forgings, and determined the country origin marking requirements applicable to the finished fittings and flanges based on a “substantial transformation” analysis articulated in *Midwood*. Customs had announced its intent to revoke these rulings in 2000, but, pursuant to the determination of Court of International Trade (“CIT”) regarding the methods employed by Customs to revoke these rulings in *Boltex Manufacturing Co., L.P. et al., v. United States*, 14 F.Supp. 2d 1339 (CIT 2000) (“*Boltex*”), Customs rescinded its previous action.⁸

Based upon the guidance of the CIT in *Boltex*, further analysis of the factual circumstances presented, and decisions of the CIT and the U.S. Court of Appeals for the Federal Circuit subsequent to *Midwood*, Customs concluded in its November 21, 2001 notice that, “there in fact has been no change in name, character, and use [*i.e.*, no substantial transformation] as a result of the processing performed in these particular cases. Therefore, we find that the steel flanges and pipe fittings processed from forgings in these cases, will be required to be marked with the country of origin of the forging.”⁹

One of the rulings which Customs intends to revoke relates to Weldbend. That ruling concerned a shipment of unfinished BWPF imported from Germany that Weldbend finished by beveling, painting, and marking the name “Weldbend” on the

⁷ *PROPOSED REVOCATION OR MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN DETERMINATION OF PIPE FITTINGS AND FLANGES*, 35 Customs Bulletin and Decisions 35 (November 21, 2001) (“Notice of Intent to Revoke”).

⁸ See Treasury Decision 00-15, 65 Fed. Reg. 13827 (March 14, 2000), Customs Bulletin, Volume 34, Number 23 (June 7, 2000), Customs Bulletin, Volume 34, Number 31 (August 2, 2000) and Customs Bulletin, Volume 34, Number 39 (September 27, 2000).

⁹ Notice of Intent to Revoke at 38.

fittings.¹⁰ Customs determined that the facts presented were sufficiently similar to those in *Midwood*, that the U.S. processing resulted in a substantial transformation, and therefore Weldbend must be considered the ultimate purchaser of the unfinished fittings. Consequently, Weldbend was not obliged to mark the finished fittings it processed with the country of origin of the unfinished fittings.

Customs' proposed ruling to revoke HRL 700022 considered whether *Midwood* was still applicable to the facts presented in that ruling, and re-examined the issue of substantial transformation in light of several post-*Midwood* determinations. Significantly, Customs noted that

In *Midwood*, the evidence showed that it was the U.S. processing that made the fittings conform to ASA specifications. Here, the invoice indicates that they {the unfinished BWPF} already conform to ASA B16.9 and ASTM A 234.^{11} We note that ASME B16.9 provides for partial compliance fittings" that may not meet the dimensions, sizes, shapes, or tolerances of the standard, as it is indicated that beveling is performed in the U.S.; nonetheless, even as "partial compliance fittings", the requirements of ASTM A 234 are met which, as indicated above, provides for the important chemical and mechanical requirements of tensile strength.¹²

In summary, Customs found that the machining required to produce finished BWPF from imported unfinished BWPF "primarily only changes the surface of finished characteristics of the flange, but the character of the imported welding fittings remains

¹⁰ *Id.* at 42, discussing HRL 700022 (October 27, 1972).

¹¹ Customs noted that "the ASA specifications are also known as 'ASME' (American Society of Mechanical Engineers) specifications. ASME B16.9 provides the overall dimensions, tolerances, ratings, testing, and markings for 'Factory-Made Wrought Steel Butt Welding fittings.' ASTM A 234 pertains to the specifications for 'Piping Fittings of Wrought Carbon Steel and Alloy Steel for Moderate and Elevated Temperatures.'" Notice of Intent to Revoke at 57.

¹² Notice of Intent to Revoke at 57.

the same.”¹³ Based upon its determination that unfinished BWPF did not undergo a change in name, character, and use, Customs concluded that “no substantial transformation results from the U.S. processing of the imported forgings.”¹⁴

IV. Customs’ Recent Notice Supports Relief for Both Unfinished and Finished Fittings

Customs’ November 21, 2001 notice underscores the administrative difficulty and inappropriateness of excluding unfinished BWPF from relief measures applied to imports of BWPF. As reflected in the Weldbend ruling that Customs intends to revoke, unfinished BWPF are imported into the United States in nearly finished forms, requiring only beveling and painting to be sold as finished BWPF. To ensure that relief measures are applied only to finished BWPF, Customs officers would be forced to examine each entry claimed to be unfinished BWPF and evaluate whether every possible processing step had been performed on those fittings. Weldbend’s “solution” would place an impossible burden on Customs. Moreover, it would invite foreign producers to export BWPF to the United States in an unfinished form, resulting in wholesale circumvention of relief applied to finished BWPF.

In addition, even if Customs were able to distinguish between unfinished and finished BWPF in every instance, Customs’ recent notice, while not dispositive in the instant context, indicates that agency’s view that any distinction between finished and unfinished is not substantial. In reaching its determination that the unfinished BWPF imported by Weldbend is not substantially transformed through processing into finished BWPF in the United States, Customs observed that the unfinished BWPF met the

¹³ *Id.* at 58.

¹⁴ *Id.*

applicable specifications of finished BWPF, and that the unfinished BWPF is intended for the same use as the finished BWPF. Thus, the products that Weldbend has asked the TPSC to exclude are not materials that become BWPF through processing in the United States; the imported products are BWPF. Therefore, measures intended to address the serious injury suffered by U.S. producers of BWPF by restricting imports of BWPF must encompass all BWPF, both finished and unfinished.

V. Conclusion

For the reasons discussed in our November 27, 2001 response to Weldbend's exclusion request, and in these supplemental comments, we urge the TPSC not to exclude unfinished BWPF from the scope of its remedy recommendations to the President.

Respectfully submitted,

/s/ Cheryl Ellsworth

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